

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURT
SOUTHERN DISTRICT OF TEXAS
FILED
BT DEC - 8 2004
William H. Milby, Clerk of Court

JOANNE MACKAY NASTI,

Plaintiff,

v.

CIBA SPECIALTY CHEMICALS
CORPORATION,

Defendant.

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H-04-4590
CIVIL ACTION NO. _____

DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 *et seq.*, Ciba Specialty Chemicals Corporation ("Ciba") files this Notice of Removal of the civil action filed against it by Joanne MacKay Nasti ("Plaintiff"). Removal is proper based on the following:

1. On September 27, 2004, Plaintiff apparently filed Plaintiff's Original Petition in the 133rd Judicial District Court of Harris County, Texas, Cause No. 2004-53637. On October 15, 2004, Plaintiff apparently filed Plaintiff's First Amended Original Petition ("Amended Petition"). On November 17, 2004, Ciba was served with process through its registered agent. Ciba timely filed its answer to the Amended Petition on November 30, 2004.

2. The 30-day period within which Defendant is required by the laws of the United States, 28 U.S.C. § 1446(b), to file this notice of removal -- *e.g.*, the period ending December 17, 2004 -- has not yet expired.

3. This Court has original subject matter jurisdiction over this civil action under 28 U.S.C. § 1332, in that it is a civil action between the citizens of different states, and therefore this action is one which may be removed to this Court by Defendant pursuant to the

provisions of 28 U.S.C. § 1441. At the time this action was filed in state court, Plaintiff Joanne MacKay Nasti was, and is, a citizen of Texas. (First Am. Pet. ¶ 2.1.) At the time this action was filed in state court, Defendant was, and is, a corporation organized under the laws of Delaware with its principal place of business in Tarrytown, New York. Additionally, the amount in controversy exceeds \$75,000.00.

4. This Court has original subject matter jurisdiction over this civil action under 28 U.S.C. § 1331 because a federal question is raised. Plaintiff alleges that Ciba “violated the Family Medical Leave Act, 29 U.S.C. § 2601, *et. seq.* when it discharged [her].” (First Am. Pet. ¶ 1.1.)

5. This Court also has supplemental removal jurisdiction pursuant to 28 U.S.C. § 1367 over any of Plaintiff’s state-law claims, if viable, because such claims are so related to Plaintiffs’ federal claim that they form part of the same case or controversy under Article III of the United States Constitution.

6. By virtue of this removal petition, Defendant does not waive its right to assert any claims or other motions, including Rule 12 motions, permitted by the Federal Rules of Civil Procedure.

7. Pursuant to Local Rule 81 of the United States District Court for the Southern District of Texas, this notice of removal is accompanied by copies of the following:

- (i) All executed process in the case (Exhibit A);
- (ii) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross-actions, third-party actions, interventions and all answers to such pleadings (Exhibit B);
- (iii) All orders signed by the state Judge (none);
- (iv) The docket sheet (Exhibit C);
- (v) An index of matters being filed (Exhibit D); and

(vi) A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit E).

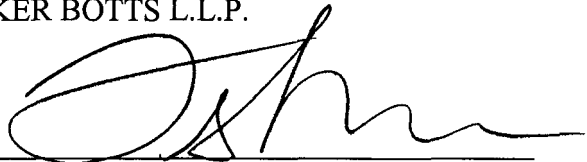
8. Pursuant to 28 U.S.C. § 1446(d), Defendant shall give written notice of the filing of this notice of removal to all adverse parties and a copy of this notice is also being filed with the clerk of the state court in which this case was originally filed.

9. Defendant accordingly prays that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the state court in accordance with law.

Respectfully submitted,

BAKER BOTTS L.L.P.

By:



Teresa S. Valderrama
State Bar No. 20422500
Federal I.D. No. 10687
One Shell Plaza
910 Louisiana
Houston, Texas 77002
Telephone: (713) 229-1860
Facsimile: (713) 229-7860


OF COUNSEL:

Carrie A. Hays
State Bar No. 24040924
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002
Telephone: (713) 229-1988
Facsimile: (713) 229-2788

ATTORNEY-IN-CHARGE FOR
CIBA SPECIALTY CHEMICALS
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice of Removal has been served by certified mail, return receipt requested, on counsel for Plaintiff, Gregg M. Rosenberg, Gregg M. Rosenberg & Associates, 11 Greenway Plaza, Suite 2810, Houston, Texas 77046, on this 8th day of December 2004.


Teresa S. Valderrama

Tab A

CAUSE NO. 2004-53637

JOANNE MACKAY NASTI

VS.

CIBA SPECIALTY CHEMICALS
CORPORATION§
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§
§
§

IN THE DISTRICT COURT

133RD JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

RETURN

Came to hand: NOVEMBER 1, 2004☒ CITATION & FIRST AMENDED ORIGINAL PETITION☐☐☐☐Executed on: NOVEMBER 17, 2004

Executed at 701 BRAZOS ST., #1050, AUSTIN, TEXAS 78701, County of TRAVIS,
by delivering to CIBA SPECIALTY CHEMICALS CORPORATION, BY DELIVERING TO ITS
REGISTERED AGENT CORPORATION SERVICE COMPANY, BY DELIVERING TO LORENZO FLORES, by
Certified Mail, Return Receipt Requested, Receipt No. 7002 2410 0000 9640 4373, a true copy
of this citation together with the accompanying pleading, having first attached such copy of such
citation to such copy of pleading.

I am over the age of 18, not a party this case, nor am I related to, employed by, or otherwise connected to any party or any party's
attorney in this case, and I have no interest in the outcome of the above numbered suit. I am of sound mind and have never been
convicted of a felony or misdemeanor involving moral turpitude.

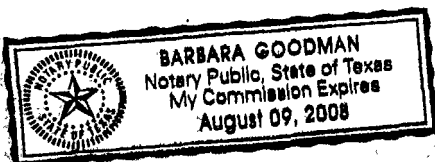
Andrew C. Manger
Authorized Person: ANDREW C. MANGER
LONE STAR ATTORNEY SERVICE, INC.
6065 HILLCROFT, SUITE 509, HOUSTON, TX 77081

VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, a notary public, on this day personally appeared the above named authorized person, known to me to be
the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the
statements therein contained are true and correct. Given under my hand and seal of office on this the 23RD day of
NOVEMBER, 2004

Barbara Goodman
Notary Public



FILED
CLERK
DISTRICT CLERK
HARRIS COUNTY, TEXAS

04 NOV 30 AM 10:00

BY _____ DEPUTY

tab B

ASSESSED
ENTERED <i>nm</i>
VERIFIED

NO. 2004-55637

JOANNE MACKAY NASTI,
Plaintiff

VS.

CIBA SPECIALTY CHEMICALS
CORPORATION,

Defendant

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§
§ 133 JUDICIAL DISTRICT
§

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

1. INTRODUCTION

1.1. Plaintiff demands a JURY TRIAL in this employment discrimination and retaliation case under the Texas Commission on Human Rights Act (Hereafter, the "ACT") and state Common Law as to any and all issues triable to a jury. Plaintiff alleges Defendant CIBA SPECIALTY CHEMICALS CORPORATION violated the Act when Defendant state Common Law as to any and all issues triable to a jury. Plaintiff also alleges that Defendant CIBA SPECIALTY CHEMICALS CORPORATION violated the Family Medical Leave Act, 29 U.S.C. § 2601, *et. seq.* when it discharged the Plaintiff. Plaintiff alleges Defendant CIBA SPECIALTY CHEMICALS CORPORATION took adverse personnel actions against Plaintiff.

04 SEP 27 PM 4:33
HARRIS COUNTY CLERK
CHARLES J. BACAL
CLERK OF DISTRICT COURT
JUDICIAL DISTRICT 133
HARRIS COUNTY, TEXAS
TX
M. PROCTOR DEPUTY

- 1.2 COMES NOW, JOANNE MACKAY NASTI, (hereinafter referred to as “Plaintiff”) complaining of and against CIBA SPECIALTY CHEMICALS CORPORATION (hereinafter referred to as “Defendant ”) and for cause of action respectfully shows the court the following:

2. PARTIES

- 2.1. Plaintiff is an individual residing in The Woodlands, Montgomery County, Texas.
- 2.2. Defendant is an employer engaging in an industry affecting interstate commerce, and employs more than 15 regular employees. Defendant can be served by serving its agent for service, Corporation Service Company, 701 Brazos, Suite 1050, Austin, Texas 78701.

3. VENUE

- 3.1. Venue of this proceeding is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002 because Harris County is the county in which all or part of the cause of action accrued, the county where Defendant maintains a residence, an agency or representative, and the county where the Plaintiff resides.

4. FACTS

- 4.1. Plaintiff is a 47-year-old female. She worked for Ciba as a Global Account Executive. From 1997 until 2003, she was ranked in the top 5% of Ciba’s 20,000 employees.
- 4.2. Ciba assigned Plaintiff to work on the Dow Global Account that is a grade 11 in the International ranks.

- 4.3. In May 2002, Defendant told Plaintiff that she would have to wait at a grade 10 until she had proven herself. Plaintiff secured the account with Dow and had received accolades from Dow to as high as Ciba's Division President.
- 4.4. Ciba promised Plaintiff her promotion many times.
- 4.5. In May 2003, there was a new management position available which would have given Plaintiff the one missing requirement of having direct reports working under her as identified in SCOPE review for high potential candidates. Defendant denied Plaintiff the promotion and hired a lesser qualified male who was not in their Leadership pool.
- 4.6. Defendant gave Plaintiff a 360 review. She was graded the highest rating available and Defendant told her that she was an incredible leader and very motivated.
- 4.7. Stephan Bochen, President of the Paper Division in Basel, Switzerland, wanted to interview Plaintiff. In October 2003, Dave Almond contacted Plaintiff to meet with him in Atlanta airport to keep her "off the radar screen." Mr. Almond told Plaintiff that she had an outstanding reputation. Plaintiff told him that she needed direct reports. Mr. Almond advised that he was interested in her as a Sales Manager with direct reports and would contact Human Resources and get back to Plaintiff.
- 4.8. In November 2003, Mr. Bochen called Plaintiff and told her that her current division boss said she was on a performance improvement plan and untouchable within the company. Plaintiff was not on any performance improvement plan and, in fact, had an "exemplary" rating.

- 4.9. Plaintiff contacted Carol Snyder in Human Resources and asked her what happened. Ms. Snyder asked Plaintiff why she took the interview with Mr. Almond and said that she should have gotten Bob Becherer's, her division boss' permission. Bob Becherer, however, was not nor ever has been her boss. Plaintiff asked Ms. Snyder about her career development and she said there is now no career development plan.
- 4.10. Respondent terminated Plaintiff on Friday January 23, 2004, despite the fact that she had advised her supervisor that she was undergoing continuing treatment for a serious medical condition at the time and had requested to be placed on leave under the FMLA..
- 4.11. Plaintiff was terminated in violation of the Texas Commission on Human Rights Act, as amended.

5. TIMELINESS

- 5.1. Plaintiff brought this suit within sixty (60) days from the date of receipt of Texas Commission on Human Rights issuance of the Notice of Right to File a Civil Action. (Exhibit "A").
- 5.2. Plaintiff filed Plaintiff's lawsuit within two years of the date Plaintiff filed Plaintiff's Charge of Discrimination. (Exhibit "B").

6. ADMINISTRATIVE CONDITIONS PRECEDENT

- 6.1. Plaintiff has completed all administrative conditions precedent since Plaintiff filed Plaintiff's charge of discrimination within 180 days of the date Plaintiff learned of the adverse employment action. (Exhibit "B").

Jurisdiction is also appropriate since this action was filed on or before two years from the date Plaintiff filed Plaintiff's complaint with the Texas Commission on Human Rights. (Exhibit "B").

7. DAMAGES

- 8.1. As a direct and proximate result of the aforementioned arbitrary and capricious acts, the Plaintiff has suffered grievous harm, including, but not limited to, substantial loss of income; humiliation and embarrassment among co-workers, potential future customers, and others; sustained damage to Plaintiff's credibility and sustained damage to Plaintiff's prospects for future employment.

8. EXEMPLARY DAMAGES

- 9.1. Defendant Ciba's actions were harsh, oppressive and malicious and as a further and proximate cause Plaintiff has suffered serious emotional distress due to Defendant's conduct. The wrong done by Defendant aggravated by the kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. Defendant acted with an evil intent to harm Plaintiff. The conduct was intentional, with conscious indifference to the rights of Plaintiff and without justification or excuse. Plaintiff, therefore, seeks exemplary damages in a sum to be determined by the trier of fact to serve as punishment to deter Defendant from such conduct in similar situations.

9 ATTORNEY'S FEES

- 10.1. Defendants' action and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated Plaintiff retaining the services of GREGG M. ROSENBERG & ASSOCIATES, 11 Greenway Plaza, suite 2810, Houston, Texas

77046 in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees.

10. JURY DEMAND

11.1. Plaintiff hereby makes Plaintiff's request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Harris County, Texas the jury fee of thirty (\$30.00) dollars.

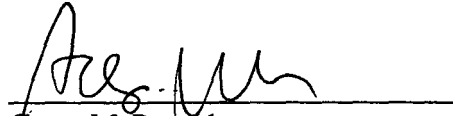
11. PRAYER

12.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer, and that on final hearing of this cause Plaintiff have the following relief:

- 12.1.1. Judgment against Defendant, for actual damages sustained by Plaintiff as alleged herein;
- 12.1.2. Judgment against Defendant for back pay lost by Plaintiff as alleged herein;
- 12.1.3. Judgment against Defendant for front pay by Plaintiff as alleged herein;
- 12.1.4. Grant Plaintiff general damages for the damage to Plaintiff's reputation;
- 12.1.5. Pre-judgment interest at the highest legal rate;
- 12.1.6. Post-judgment interest at the highest legal rate until paid;
- 12.1.7. Punitive damages and/or liquidated damages as the case may be.
- 12.1.8. Damages for mental pain and mental anguish for intentional infliction of emotional distress;

- 12.1.9. Exemplary damages;
- 12.1.10. Attorney's fees;
- 12.1.11. All costs of court expended herein;
- 12.1.12. Such other and further relief, at law or in equity, general or special to which Plaintiff may show Plaintiff justly entitled.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gregg M. Rosenberg", is written over a horizontal line.

Gregg M. Rosenberg

Texas State Bar ID 17268750

GREGG M. ROSENBERG & ASSOCIATES

11 Greenway Plaza, Suite 2810

Houston, Texas 77046

(713) 960-8300

(713) 621-6670 (Facsimile)

Attorney-in-Charge for Plaintiff

OF COUNSEL:

GREGG M. ROSENBERG & ASSOCIATES

ATTORNEYS FOR PLAINTIFF

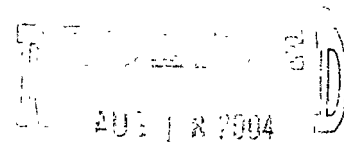
6330 Hwy 290 East, Suite 250
Austin, TX 78723
P. O. Box 13006
Austin, TX 78711-3006
www.tchr.state.tx.us



**Texas Workforce Commission
Civil Rights Division**

August 13, 2004

(512) 437-3450
(512) 437-3478
(888) 452-4778 Toll Free
(512) 371-7473 TTY
(800) 735-2989 Texas Relay



NOTICE OF RIGHT TO FILE A CIVIL ACTION


Gregg M. Rosenberg
ATTORNEY AT LAW
11 GREENWAY PLAZA, SUITE 2810
HOUSTON, TX 77046-1105

Re: *Joanne Nasti v. CIBA SPECIALTY CHEMICALS*
EEOC Complaint #330A402814
TCHR/Local Commission Complaint #

Pursuant to Sections 21.252 and 21.254 of the Texas Labor Code, and Chapter 327, Section 327.7 of the Commission's Rules, this notice is to advise you of your right to bring a private civil action in state court in the above-referenced case. PLEASE BE ADVISED THAT YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION. If the above-referenced case was processed by the United States Equal Employment Opportunity Commission or another agency, you should also notify that agency as to your intention to file a civil action.

If your case has been successfully resolved by the U. S. Equal Employment Opportunity Commission or another agency through a voluntary settlement or conciliation agreement, you may be prohibited by the terms of such an agreement from filing a private civil action in state court pursuant to the Texas Commission on Human Rights Act, as amended.

The United States Supreme Court has held in *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), that a federal district court must generally dismiss a Title VII action involving the same parties and raising the same issues as those raised in a prior state court action under Chapter 21 of the Texas Labor Code. Therefore, filing a lawsuit in state court based on the issuance of this notice of right-to-sue may prevent you from filing a lawsuit in federal court based on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e - et seq.

Sincerely,

Ray Hammarth
Acting Employment Invest. Mgr.



RETAIN ENVELOPE TO VERIFY DATE RECEIVED

Copy to:

Patricia L. Wager
ASSISTANT GENERAL COUNSEL
P.O. BOX 2005
TARRYTOWN, NY 10591

The "Texas Workforce Commission is an Equal Opportunity Employer"

CERT-C



03/03/2004 15:50

7136216676

ROSENBERG

PAGE 03

CHARGE OF DISCRIMINATION		AGENCY <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	CHARGE NUMBER 330-2004-02814
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.			
Texas Commission on Human Rights <small>State or local Agency, if any</small>		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Ms. JoAnne Nasti		HOME TELEPHONE (Include Area Code) (281) 367-2479	
STREET ADDRESS 3 Raintree Place,	CITY, STATE AND ZIP CODE The Woodlands, Texas 77381	DATE OF BIRTH 10/27/56	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Ciba Specialty Chemicals	NUMBER OF EMPLOYEES, MEMBERS 500+	TELEPHONE (Include Area Code) (281) 363-4 009	
STREET ADDRESS 540 White Plains Road,	CITY, STATE AND ZIP CODE Tarrytown, NY 10591	COUNTY	
NAME	TELEPHONE NUMBER (Include Area Code)		
STREET ADDRESS	CITY, STATE AND ZIP CODE	COUNTY	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST (ADEA/FEPA) LATEST (ALL)	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		Jan. 23, 2004 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
Please see attached.			
I want this charge filed with both the EEOC and the State or local Agency, if any I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME (Day, month, and year) 9/01/2004	
Date 1/9/2004 Charging Party (Signature) <i>JoAnne Nasti</i>		TABITHA T. RIVERA MY COMMISSION EXPIRES October 04, 2006 <div style="border: 2px solid black; padding: 5px; display: inline-block;"> EXHIBIT <div style="font-size: 2em; font-weight: bold; margin-top: 5px;">B</div> </div>	

1. I am a 47-year-old female. I worked for the Respondent, Ciba Specialty Chemicals (Respondent) as a Global Account Executive. From 1997 until 2002, I was ranked in the top 1% of Respondent's 20,000 employees.
2. Respondent assigned me to work on the Dow Global Account which is a grade 11 in the International ranks.
3. In May 2002, Respondent told me I would have to wait at a grade 11 until I had proven myself. I secured the account with Dow and I received accolades from Dow to Respondent's President.
4. Respondent promised me many promotions.
5. In May 2003, there was a new management position available which would have given me one missing requirement of having direct reports working under me. Respondent denied me the promotion and hired a lesser qualified male who was not in Respondent's management development pool.
6. Respondent gave me a 360 review. I was graded the highest rating available and told me that I was an incredible leader and very motivated.
7. Stephan Bochen, President of the Paper Division in Basel, Switzerland, wanted to interview me. In October 2003, Dave Almond contacted me to meet with him in Atlanta to keep me off the radar screen. Mr. Almond told me I have an outstanding reputation. I told him I needed direct reports, he said he would contact Human Resources and get back to me.
8. In November 2003, Mr. Bochen called me and told me that my division boss said I was on a performance improvement plan and untouchable within the company. I was not a performance improvement plan.
9. I contacted Carol Snyder in Human Resources and asked her what happened. Ms. Snyder asked me why I took the interview with Mr. Almond and said that I should have gotten Bob Becker, my division boss's permission. I asked Ms. Snyder about my career development and she said there is no career development.
10. Respondent terminated me on Friday January 23, 2004.
11. Respondent discriminated and retaliated against me and placed me in violation of Title VII of the Civil Rights Act of 1964, as amended and the Texas Commission on Human Rights Act, as amended based on my gender (female).
12. The information provided in this Charge of Discrimination is provided for the express purpose of assisting the Equal Employment Opportunity Commission and/or the Texas Commission on Human Rights with its investigation of this claim. This information is not meant to be exhaustive or all encompassing, but rather to give the respondent fair notice of the claims being asserted herein. This information is not being provided so that an attorney representing the Respondent at some later date in the defense of a trial stemming from this Charge can use it to insinuate that it is inclusive to the last detail of the sum of the allegations being advanced against the Respondent.

FILE COPY

NO..2004-53637

JOANNE MACKAY NASTI,
Plaintiff

VS.

CIBA SPECIALTY CHEMICALS
CORPORATION,

Defendant

§ IN THE DISTRICT COURT
§
§
§
§ OF HARRIS COUNTY, TEXAS
§
§
§
§ 133rd JUDICIAL DISTRICT
§

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

1. INTRODUCTION

- 1.1. Plaintiff demands a JURY TRIAL in this employment discrimination and retaliation case under the Texas Commission on Human Rights Act (Hereafter, the "ACT") and state Common Law as to any and all issues triable to a jury. Plaintiff alleges Defendant CIBA SPECIALTY CHEMICALS CORPORATION violated the Act when Defendant state Common Law as to any and all issues triable to a jury. Plaintiff also alleges that Defendant CIBA SPECIALTY CHEMICALS CORPORATION violated the Family Medical Leave Act, 29 U.S.C. § 2601, *et. seq.* when it discharged the Plaintiff. Plaintiff alleges Defendant CIBA SPECIALTY CHEMICALS CORPORATION took adverse personnel actions against Plaintiff.
- 1.2 COMES NOW, JOANNE MACKAY NASTI, (hereinafter referred to as "Plaintiff") complaining of and against CIBA SPECIALTY CHEMICALS

04 OCT 15 PM 2:22
HARRIS COUNTY CLERK
CHARLES B. JACOB
SAXHEBAC
FESSE
PROCESSING DEPUTY

NO. 2004-53637

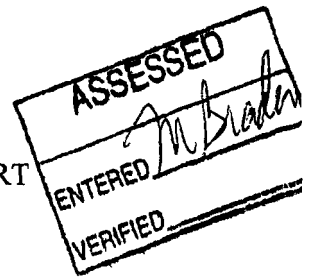
JOANNE MACKAY NASTI,
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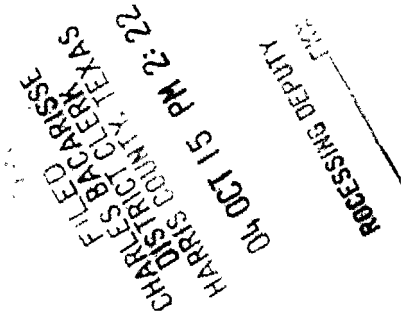
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1.2 COMES NOW, JOANNE MACKAY NASTI, (hereinafter referred to as "Plaintiff") complaining of and against CIBA SPECIALTY CHEMICALS



CORPORATION (hereinafter referred to as "Defendant ") and for cause of action respectfully shows the court the following:

2. PARTIES

- 2.1. Plaintiff is an individual residing in The Woodlands, Montgomery County, Texas.
- 2.2. Defendant is an employer engaging in an industry affecting interstate commerce, and employs more than 15 regular employees. Defendant can be served by serving its agent for service, CT Corporation System, 1021 Main St., Suite 1150 Houston, Texas 77002.

3. VENUE

- 3.1. Venue of this proceeding is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code § 15.002 because Harris County is the county in which all or part of the cause of action accrued, the county where Defendant maintains a residence, an agency or representative, and the county where the Plaintiff resides.

4. FACTS

- 4.1. Plaintiff is a 47-year-old female. She worked for Ciba as a Global Account Executive. From 1997 until 2003, she was ranked in the top 5% of Ciba's 20,000 employees.
- 4.2. Ciba assigned Plaintiff to work on the Dow Global Account that is a grade 11 in the International ranks.
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- 4.11. Plaintiff was terminated in violation of the Texas Commission on Human Rights Act, as amended.

5. TIMELINESS

- 5.1. Plaintiff brought this suit within sixty (60) days from the date of receipt of Texas Commission on Human Rights issuance of the Notice of Right to File a Civil Action. (Exhibit "A").
- 5.2. Plaintiff filed Plaintiff's lawsuit within two years of the date Plaintiff filed Plaintiff's Charge of Discrimination. (Exhibit "B").

6. ADMINISTRATIVE CONDITIONS PRECEDENT

- 6.1. Plaintiff has completed all administrative conditions precedent since Plaintiff filed Plaintiff's charge of discrimination within 180 days of the date Plaintiff learned of the adverse employment action. (Exhibit "B").
- Jurisdiction is also appropriate since this action was filed on or before two years from the date Plaintiff filed Plaintiff's complaint with the Texas Commission on Human Rights. (Exhibit "B").

7. DAMAGES

- 8.1. As a direct and proximate result of the aforementioned arbitrary and capricious acts, the Plaintiff has suffered grievous harm, including, but not limited to, substantial loss of income; humiliation and embarrassment among co-workers, potential future customers, and others; sustained damage to Plaintiff's credibility and sustained damage to Plaintiff's prospects for future employment.

8. EXEMPLARY DAMAGES

- 9.1. Defendant Ciba's actions were harsh, oppressive and malicious and as a further and proximate cause Plaintiff has suffered serious emotional distress due to Defendant's conduct. The wrong done by Defendant aggravated by the kind of willfulness, wantonness, and malice for which the law allows the imposition of exemplary damages. Defendant acted with an evil intent to harm Plaintiff. The conduct was intentional, with conscious indifference to the rights of Plaintiff and without justification or excuse. Plaintiff, therefore, seeks exemplary damages in a sum to be determined by the trier of fact to serve as punishment to deter Defendant from such conduct in similar situations.

9 ATTORNEY'S FEES

- 10.1. Defendants' action and conduct as described herein and the resulting damage and loss to Plaintiff has necessitated Plaintiff retaining the services of GREGG M. ROSENBERG & ASSOCIATES, 11 Greenway Plaza, suite 2810, Houston, Texas 77046 in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees.

10. JURY DEMAND

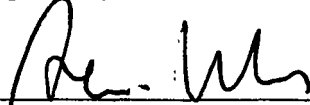
- 11.1. Plaintiff hereby makes Plaintiff's request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Harris County, Texas the jury fee of thirty (\$30.00) dollars.

11. PRAYER

- 12.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer, and that on final hearing of this cause Plaintiff have the following relief:

- 12.1.1. Judgment against Defendant, for actual damages sustained by Plaintiff as alleged herein;
- 12.1.2. Judgment against Defendant for back pay lost by Plaintiff as alleged herein;
- 12.1.3. Judgment against Defendant for front pay by Plaintiff as alleged herein;
- 12.1.4. Grant Plaintiff general damages for the damage to Plaintiff's reputation;
- 12.1.5. Pre-judgment interest at the highest legal rate;
- 12.1.6. Post-judgment interest at the highest legal rate until paid;
- 12.1.7. Punitive damages and/or liquidated damages as the case may be.
- 12.1.8. Damages for mental pain and mental anguish for intentional infliction of emotional distress;
- 12.1.9. Exemplary damages;
- 12.1.10. Attorney's fees;
- 12.1.11. All costs of court expended herein;
- 12.1.12. Such other and further relief, at law or in equity, general or special to which Plaintiff may show Plaintiff justly entitled.

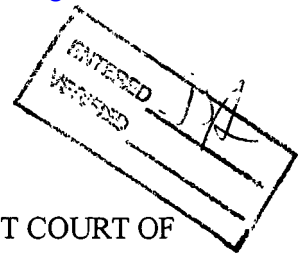
Respectfully Submitted,



Gregg M. Rosenberg
Texas State Bar ID 17268750
GREGG M. ROSENBERG & ASSOCIATES
11 Greenway Plaza, Suite 2810
Houston, Texas 77046
(713) 960-8300
(713) 621-6670 (Facsimile)
Attorney-in-Charge for Plaintiff

OF COUNSEL:
GREGG M. ROSENBERG & ASSOCIATES

ATTORNEYS FOR PLAINTIFF



CAUSE NO. 2004-53637

JOANNE MACKAY NASTI,

Plaintiff,

vs.

CIBA SPECIALTY CHEMICALS
CORPORATION,

Defendant.

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§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

133rd JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant Ciba Specialty Chemicals Corporation ("Ciba") files this original answer and would show the court as follows:

**I.
General Denial**

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Ciba generally denies the allegations contained in Plaintiff's First Amended Original Petition ("Amended Petition") and demands strict proof of each and every allegation that Plaintiff makes.

**II.
Special Denial**

Ciba specially denies that Plaintiff is entitled to a jury on all issues alleged in her Amended Petition. Ciba further specially denies that Plaintiff may recover the categories of damages sought by the Amended Petition.

5-1
7044009

III.
Defenses, Affirmative Defenses, and Other Matters

1. Plaintiff's Amended Petition fails to state a claim upon which relief can be granted.
2. Plaintiff has failed to mitigate alleged damages.
3. Damages, if any are awarded, should be reduced by interim earnings or amounts earnable with reasonable diligence by Plaintiff and by other amounts recovered by Plaintiff from any interim source.
4. Ciba is entitled to an offset for or monies owed by Plaintiff.
5. To the extent applicable, Ciba asserts the defenses of estoppel, waiver, unclean hands and ratification.
6. Ciba asserts the defense of election of remedies.
7. Plaintiff's damages, if any, must be reduced pursuant to the doctrine of after-acquired evidence.
8. To the extent Plaintiff's claims and/or damages are barred by the doctrine of laches and/or applicable periods of limitations, Ciba asserts those defenses.
9. Plaintiff has failed to timely file and serve this lawsuit with respect to claims under the Texas Labor Code.
10. To the extent Plaintiff has failed to timely exhaust internal and external administrative remedies, Plaintiffs claims are barred.
11. Any and all actions taken by Ciba with respect to Plaintiff's employment were for legitimate, non-discriminatory reasons and were based on factors other than Plaintiff's gender or protected activity, if any.

12. Ciba's policies and actions affecting Plaintiff's employment were justified, job related and for business reasons necessary to the normal operation of the business.

13. Ciba acted reasonably and in good faith at all material times based on all relevant facts and circumstances known by it at the time it so acted and, accordingly, Plaintiff is barred from recovery in this action on each purported claim asserted.

14. Ciba asserts that Plaintiff's alleged injuries arise in whole or in part from the conduct of Plaintiff and/or third parties, and not from the conduct or breach of any duty by Ciba.

15. Ciba is not liable for punitive damages because even if there were any discriminatory conduct by any of Ciba's managerial agents, it would be contrary to Ciba's good faith efforts to enforce its anti-discrimination policies.

16. Any award of punitive damages in this case would violate the Texas Constitution and the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, as well as guarantees contained in the Sixth and Eighth Amendments thereto.

17. The tort reform cap on punitive or exemplary damages imposed by Chapter 41 of the Civil Practice & Remedies Code applies to limit Plaintiff's recovery for any alleged tort.

18. Damages under the Texas Labor Code are limited by that statute.

19. Ciba reserves the right pursuant to *Transportation Ins. Co. v. Moriel* to bifurcate the determination of the amount of punitive damages, if any, from the remaining issues in the trial.

20. Ciba asserts the defenses and limitations on liability and damages as set out in Chapters 101, 104, and 108 of the Civil Practice & Remedies Code.

21. Ciba asserts that the damages sought by Plaintiff for alleged humiliation, embarrassment, and sustained damage to her credibility and prospects for future employment are barred because any statements on which the damages are based were qualifiedly privileged, substantially true or based on opinion, and non-defamatory.

22. Ciba asserts that the damages sought by Plaintiff for alleged humiliation, embarrassment, and sustained damage to her credibility and prospects for future employment are barred because any statements on which the damages are based were not published.

23. Ciba asserts that the damages sought by Plaintiff for alleged humiliation, embarrassment, and sustained damage to her credibility and prospects for future employment are barred by the applicable period of limitations.

24. Ciba asserts that it is entitled to reasonable and necessary attorneys' fees under the *Christiansburg Garment* standard for having to defend itself against the false and wholly frivolous allegations contained in the Amended Petition because Plaintiff knew they were false when filed and also because Plaintiff continued to prosecute these claims even after she knew them to be meritless, groundless and brought in bad faith.

25. Ciba reserves the right to amend this Answer if further investigation and/or discovery reveal that supplementation or correction of any statement or answer contained herein is necessary.

IV. Prayer

Ciba prays that Plaintiff take nothing by reason of her suit and that all court costs and attorneys' fees be taxed and adjudged against her. Ciba further prays for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: 

Teresa S. Valderrama

State Bar No. 20422500

Carrie A. Hays

State Bar No. 24040924

One Shell Plaza

910 Louisiana

Houston, Texas 77002-4995

(713) 229-1234 (Telephone)

(713) 229-1522 (Facsimile)

ATTORNEYS FOR DEFENDANT CIBA
SPECIALTY CHEMICALS CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to Gregg M. Rosenberg, Gregg M. Rosenberg & Associates, 11 Greenway Plaza, Suite 2810, Houston, Texas 77046, counsel for Joanne MacKay Nasti, by certified mail, return receipt requested, this 30th day of November 2004.


Teresa S. Valderrama

tabc

2004-53637

FILED: 09/27/2004

NASTI, JOANNE MACKAY
PLAINTIFFS

ROSENBERG, GREGG M.

Attorney

NATURE OF ACTION

EMPLOYMENT DISCHARGE

VS.

CIBA SPECIALTY CHEMICALS CORPORATION

DEFENDANTS

Attorney

SURETIES ON COST BOND:

GENERAL ORDER OF THE COURT 133RD

Jury Fee Paid By:
LF109447
GREGG M. ROSENBERG & A

SETTINGS

tab D

EXHIBIT D

Index of Matters Being Filed

1. All executed process in the case (Exhibit A);
2. Pleadings asserting causes of action, e.g., petitions, counterclaims, cross-actions, third-party actions, interventions and all answers to such pleadings (Exhibit B);
3. All orders signed by the State Judge (none);
4. The docket sheet (Exhibit C);
5. A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit E).

tab 2

EXHIBIT E

List of Attorneys

Attorneys for Plaintiff, Joanne MacKay Nasti:

Gregg M. Rosenberg
Gregg M. Rosenberg & Associates
11 Greenway Plaza, Suite 2810
Houston, Texas 77046
(713) 960-8300
(713) 621-6670 (Facsimile)

Attorneys for Defendants Ciba Specialty Chemicals Corporation:

Teresa S. Valderrama
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4995
713-229-1860
713-229-7860 (Facsimile)

JS 44
(Rev 07/89)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1(a) PLAINTIFFS

Joanne McKay Nasti

DEFENDANTS

Ciba Specialty Chemicals Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Montgomery County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Gregg M. Rosenberg
Gregg M. Rosenberg & Associates
11 Greenway Plaza, Suite 2810
Houston, Texas 77046
(713) 960-8300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
DEC - 8 2004
Teresa S. Valderrama
Baker Botts LLP
900 Louisiana
Houston, Texas 77002
(713) 229-1860

H-04-4590**II. BASIS OF JURISDICTION**

(PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only) (FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|----------------------------|---------------------------------------|
| PTF | DEF | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | Incorporated or Principal Place of Business in This State | | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State | Incorporated and Principal Place of Business in Another State | | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | Foreign Nation | | |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

ERISA Preemption, 29 U.S.C. § 1001 et seq. 28 U.S.C. § 1332 (Diversity)**V. NATURE OF SUIT** (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Theft in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Security Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7809	

VI. ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION**DEMAND \$ ***

Check YES only if demanded in complaint.

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY:****JUDGE:**

DATE December 8, 2004

SIGNATURE OF ATTORNEY OF RECORD